

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

CIVIL ACTION NO. 03CV11633 MAP

JT GLOVER, III, pro se

Plaintiff,

v.

REPRESENTATIVES AFFILIATED
WITH THE MASSACHUSETTS
DEPARTMENT OF MENTAL
RETARDATION-WESTERN MASS
REGIONAL OFFICES:
MR. GERALD MORRISSEY
MR. PETER MORIN
MR. BERNARD MURPHY
MS. PAM NICHOLSON
MR. LARRY TUMMINO

Defendants.

FILED
CLERK'S OFFICE
JAN 6 2004
U.S. DISTRICT COURT
DISTRICT OF MASS

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
TO FILE A SECOND AMENDED COMPLAINT
AND
DEFENDANTS' MOTION TO STRIKE DOCUMENTS AND INFORMATION
SUBMITTED WITH PLAINTIFF'S
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

The Attorney General, on behalf of all named defendants, submits this opposition to plaintiff's, JT Glover, III, motion to submit a second amended complaint and defendants' motion to strike documents and information submitted with Glover's opposition to defendants' motion to dismiss. In support, the defendants state the following:

1. On December 29, 2003, Glover served his opposition to defendants' motion to dismiss or, alternatively, for summary judgment, and his motion to file a second amended

complaint (“Glover’s Opposition”). The memorandum filed in support of Glover’s opposition contains information (pp. 5-6, 10-17) and attachments that should be stricken, even assuming they were submitted pursuant to Fed. R. Civ. P. 56. The information and documents are neither properly authenticated nor admissible in evidence, as they consist of hearsay. They should thus be stricken. See Fed. R. Civ. P. 56(e); Carmona v. Toledo, 215 F.3d 124, 131 (1st Cir. 2000)(affirming the decision to strike and not consider documents that were merely attached to the summary judgment brief, and not authenticated or attached to an affidavit). Further, it’s not clear whether the remainder of Glover’s opposition complies with Fed. R. Civ. P. 12(b)(6) because there are virtually no supporting references to the amended complaint. Thus, all information not supported by the amended complaint should also be stricken.

2. This Court should also deny Glover’s motion to file a second amended complaint. Glover apparently submitted the above referenced documents and information to show this court that if he is allowed to amend his complaint to include such documents and information, he could defeat the defendants’ motion to dismiss or, alternatively, for summary judgment. This position is without merit. Even assuming Glover were permitted to amend his complaint to include the referenced information and documents, it would still suffer from the same deficiencies that were identified in defendants’ motion to dismiss or, alternatively, for summary judgment. Thus, Glover’s filing of a second amended complaint would be an exercise in futility that should be disallowed by this Court. Foreman v. Davis, 371 U.S. 178, 182 (1962); see also Shepherd v. Chrysler Corporation, 433 F.Supp. 950, 953-54 (E.D. Mich. 1977)(motion to amend the complaint to state more facts denied as complaint read with plaintiff’s affidavits fails to state cause of action and amendment would therefore be fruitless).

Wherefore, for the above reasons, the defendants request that this Court (1) strike the above-referenced documents and information and (2) deny the motion to file a second amended complaint.

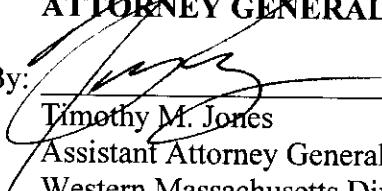
THE DEFENDANTS

By their attorney,

THOMAS F. REILLY

ATTORNEY GENERAL

By:


Timothy M. Jones

Assistant Attorney General

Western Massachusetts Division

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Springfield, MA 01103

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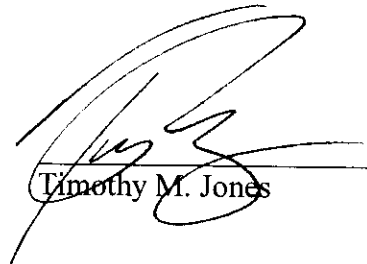
BBO No. 618656

Dated: January 5, 2004

CERTIFICATE OF SERVICE

I, Timothy M. Jones, hereby certify that on January 5, 2004, I served a copy of the foregoing **Defendants' Opposition to Plaintiff's Motion to File a Second Amended Complaint and Defendants' Motion to Strike Documents and Information Submitted with Plaintiff's Opposition to Defendants' Motion to Dismiss** by First-Class Mail, postage prepaid, on the following parties of record:

JT Glover, III
46 Quincy Street, #5
North Adams, MA 01247


Timothy M. Jones